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8 Attorneys for the United States of America

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 CLIFFORD CHENG,

17 Defendant.
18

No.

PLEA AGREEMENT

19
20 I, CLIFFORD CHENG, and the United States Attorney's Office for the Northern District
21 of California (hereafter "the government") enter into this written plea agreement (the
22 "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to the captioned information charging me with Clean Air
25 Act Violation – Negligent Release of Hazardous Air Pollutant, in violation of 42 U.S.C. §§ 7412
26 and 7413(c)(4). I agree that the elements of the offense and the maximum penalties are as
27 follows: (1) I am a person; (2) who acted negligently; (3) and caused the release into the air; (4)
28 of asbestos; and (5) and at the time of the release I negligently placed another person in imminent

PLEA AGREEMENT

1 danger of death or serious bodily injury.

- | | | | |
|---|----|---------------------------------|-----------|
| 2 | a. | Maximum prison sentence | 1 year |
| 3 | b. | Maximum fine | \$100,000 |
| 4 | c. | Maximum supervised release term | 1 year |
| 5 | d. | Mandatory special assessment | \$25 |

6 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that
7 the following facts are true:

8 a. I am a partner in Cheng, Chow and Chu, Inc. ("Cheng, Chow and Chu"), a California
9 corporation that owns a commercial real estate site located at 22455 Maple Court and 22336
10 Main Street, in Hayward, California ("the Hayward facility"). The Hayward facility is composed
11 of five connected buildings, with a total space of 52,000 square feet.

12 b. In approximately 1993, I purchased the Hayward facility on behalf of Cheng, Chow and
13 Chu. At this time, I received an survey conducted of the Hayward facility which identified the
14 location of the asbestos located within the Hayward facility ("Hayward facility asbestos survey").

15 c. The Hayward facility asbestos survey was conducted in 1989 and identified asbestos
16 material throughout the facility including in the fire-proofing, insulated pipes, linoleum, ceiling
17 tiles, floor and carpet mastic, floor tiles and roofing materials. The survey stated that the
18 asbestos should be removed prior to demolition.

19 d. In approximately August 2000, I hired Sincere Construction, a contractor, to conduct an
20 extensive renovation of the Hayward facility. This renovation included removing all materials,
21 from the floor to the ceiling, from approximately 30,000 square feet of the facility. I knew that
22 this material contained asbestos. I failed to provide the Hayward facility asbestos survey to
23 Sincere Construction.

24 e. From August 2000 through September 2000, Sincere Construction conducted a renovation
25 of the Hayward facility. During this renovation, asbestos was released into the ambient air.

26 f. On September 27, 2000, an inspector with the Bay Area Air Quality Management Division,
27 the local air agency, inspected the Hayward facility. The inspector discovered that the asbestos
28 material was being improperly removed from the Hayward facility. Four open topped dumpsters

1 located outside the facility contained asbestos. In addition, the inspector found numerous piles of
2 construction debris dumped outside of the Hayward facility, which were later sampled and found
3 to contain asbestos. During the inspection, eight individuals were conducting the renovation
4 without adequate protective clothing. There were clouds of dust throughout the inside and
5 immediately outside the Hayward facility.

6 3. I agree to give up all rights that I would have if I chose to proceed to trial,
7 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
8 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
9 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
10 to pursue any affirmative defenses and present evidence. To the extent that I have a right to have
11 facts that are used to determine the sentence (including any Sentencing Guideline factors and any
12 departure grounds) charged in the indictment by the grand jury and found by a jury at trial beyond
13 a reasonable doubt (see Blakely v. Washington, 124 S. Ct. 2531 (2004)), I waive those rights and
14 agree that the Court will find the facts that determine my sentence under the applicable lesser
15 standard of proof determined by the guidelines and case law prior to Blakely.

16 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
17 the Court. I also agree to waive any right I may have to appeal my sentence.

18 5. I agree not to file any collateral attack on my conviction or sentence, including a
19 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim
20 that my constitutional right to the effective assistance of counsel was violated.

21 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
22 entered, unless the Court declines to accept the sentence agreed to by the parties. I agree that the
23 government may withdraw from this agreement if the Court does not accept the agreed upon
24 sentence set out below.

25 7. I agree that my sentence should be calculated pursuant to the Sentencing
26 Guidelines as follows, and that I will not ask for any other adjustment to or reduction in the
27 offense level or for a downward departure of any kind:

28 a. Base Offense Level, U.S.S.G. § 2Q1.2:

8

b.	Ongoing release, U.S.S.G. §2Q1.2(b)(1A):	6
c.	Cleanup required substantial expenditure, U.S.S.G. § 2Q1.2(b)(3)	4
d.	Acceptance of responsibility: (If I meet the requirements of U.S.S.G. § 3E1.1)	<u>-3</u>
e.	Adjusted offense level	15
f.	Downward departure for negligent conduct U.S.S.G. §2Q1.2, pursuant to application note 4	<u>-5</u>
		9

I agree that, regardless of any other provision in this agreement, the government may and will provide to the Court and the Probation Office all information relevant to the charged offenses or the sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines calculations above, the Court may conclude that a higher guideline range applies to me, but if it does, I will be entitled to withdraw my guilty plea pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure.

8. I agree that an appropriate disposition of this case is as follows: 4 months home detention, 1 year supervised release (with conditions to be fixed by the Court), \$5,000 fine, and \$25 special assessment. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office, provide accurate and complete financial information, submit sworn statements and give depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes, and release funds and property under my control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

9. I agree that, regardless of any other provision in this agreement, the government may and will provide to the Court and the Probation Office all information relevant to the charged offenses or the sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines calculations above, the Court may conclude that a higher guideline range applies to me, but if it does, I will be entitled to withdraw my guilty plea pursuant to rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, only if the Court determines that I have accepted responsibility pursuant to U.S.S.G. § 3E1.1..

1 I agree not to commit or attempt to commit any crimes before sentence is imposed or before
2 I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release (if
3 any); intentionally provide false information to the Court, the Probation Office, Pretrial Services,
4 or the government; or fail to comply with any of the other promises I have made in this
5 Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement,
6 then the government will be released from all of its promises in this agreement, including those
7 set forth in paragraphs 12 through 14 below, but I will not be released from my guilty plea.

8 10. I agree that this Agreement contains all of the promises and agreements between
9 the government and me, and I will not claim otherwise in the future.

10 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
11 District of California only, and does not bind any other federal, state, or local agency.

12 The Government's Promises

13 12. The government agrees to move to dismiss any open charges pending against the
14 defendant in the captioned indictment at the time of sentencing.

15 13. The government agrees not to file or seek any additional charges against the
16 defendant that could be filed as a result of the investigation that led to the captioned information.

17 14. The government agrees that the appropriate sentence in this case should be as set
18 forth in paragraph 8 above, if legally available, unless the defendant violates the agreement as set
19 forth in paragraph 9 above or fails to accept responsibility.

20 The Defendant's Affirmations

21 15. I confirm that I have had adequate time to discuss this case, the evidence, and this
22 Agreement with my attorney, and that he has provided me with all the legal advice that I
23 requested.

24 16. I confirm that while I considered signing this Agreement, and at the time I signed
25 it, I was not under the influence of any alcohol, drug, or medicine.

26 17. I confirm that my decision to enter a guilty plea is made knowing the charges that
27 have been brought against me, any possible defenses, and the benefits and possible detriments of
28 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no

1 one coerced or threatened me to enter into this agreement.
2
3

4 Dated: _____

CLIFFORD CHENG
Defendant

6 KEVIN V. RYAN
7 United States Attorney
8

9 Dated: _____

10 MAUREEN C. BESSETTE
11 Assistant United States Attorney

12 I have fully explained to my client all the rights that a criminal defendant has and all the
13 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
14 and all the rights he is giving up by pleading guilty, and, based on the information now known to
15 me, his decision to plead guilty is knowing and voluntary.
16

17 Dated: _____

18 DORON WEINBERG
19 Attorney for Defendant
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